



DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land – Helping to build great communities

DATE: January 22, 2015

TO: Planning Commission

FROM: James Caruso, Senior Planner

SUBJECT: Supplemental Staff Report for the Renewable Energy Streamlining Program (RESP)

Background

As discussed in previous staff reports, the RESP proposes a streamlined process to encourage the development of smaller (<20 MW) renewable energy facilities in the unincorporated area of the county. At the January 8, 2015 study session on the RESP, your Commission and members of the public raised questions regarding the specifics of the streamlined process, including how it would differ from the present permit process for such facilities, who oversees the permit process, how self-mitigation works, how technical reports are reviewed and how streamlined decisions are appealed.

Land Use Permits

There are generally four types of land use permits issued by the County:

- Zoning Clearance (ministerial) – a routine approval that is issued when a land use or development meets all applicable provisions of the Land Use Ordinance (issued for single family dwellings in many areas).
- Site Plan Review (ministerial) – considers the greater effects these uses may have upon their surroundings, and characteristics of adjacent uses that could have detrimental effects upon a proposed use.
- Minor Use Permit (MUP) – a discretionary permit that provides for public review of significant land use proposals to insure the proper integration into the community of land uses which, because of their type or intensity, may only be appropriate on particular sites, or may only be appropriate if they are designed or laid out in a particular manner. Minor Use Permits require a public hearing conducted by a staff hearing officer.

- Conditional Use Permit (CUP) – a discretionary permit similar to a MUP but significant enough to warrant a hearing before the Planning Commission instead of a hearing officer.

Each type of land use permit follows similar paths until the approval step. Each type of land use permit also has its own appeal path. The following table summarizes the role of the review authority in approving land use permits and hearing appeals.

Table 1
Role of the Review Authority

Land Use Permit Type	Planning Director	Planning Commission	Board of Supervisors
Zoning Clearance	Decision	Appeal	Appeal
Site Plan review	Decision	Appeal	Appeal
Minor Use Permit	Decision ¹		Appeal
Conditional Use Permit	Recommendation	Decision	Appeal
Variance	Recommendation	Decision	Appeal

1. A public hearing is conducted by a hearing officer.

Permit Application Process

Application Contents

Each type of land use permit application must provide certain site information.

Zoning Clearance – A Zoning Clearance is a *ministerial* permit that, "... certifies that the land use or development will satisfy all applicable provisions of this Title. Title 22 requires that the following information be part of an application for a Zoning Clearance:

- Site location and dimensions
- Road access and improvements
- Building and structures
- Easements
- Utilities
- Site improvements
- Landforms
- Additional information such as drainage plan, grading plan, fires safety plan.

The Planning Director shall approve a Zoning Clearance application when the proposed project or use satisfies all applicable provisions of this Title.

Site Plan Review – According to Title 22, Site Plan Review is required by this Title for projects more intensive than those requiring a Zoning Clearance. Like the Zoning Clearance, a Site Plan Review is also a ministerial land use permit.

Site Plan Review applications must include all of the information required for a Zoning Clearance and the following:

- Preliminary floor plans
- Architectural elevations
- Adjacent land use information
- Landscape Plan
- Counter map

All land use permit applications from Site Plan Review through Conditional Use Permits are required to provide certain information, when applicable, in support of the proposed project, including:

- Agricultural buffers
- Archaeological Reports
- Botanical and Biological Reports
- Noise Study
- Tree Inventory
- Visual Analysis

Minor Use Permits– Title 22 states that the application content of MUPs is the same as for Site Plan Review. The major difference in the processes is that MUP approval can be subject to a public hearing before a Hearing Officer if requested. MUPs are subject to CEQA and may be elevated to the Planning Commission if, at the discretion of the Director, the Minor Use Permit application may generate substantial public controversy or involve significant land use policy decisions. Major steps in the MUP application process include:

- Environmental determination
- Administrative hearing
- Hearing Notice
- Notice of Final Action

Conditional Use Permits – According to Title 22, the content of a Conditional Use Permit application shall be the same as required for Site Plan Review. A CUP follows a hearing process similar to a MUP, except a CUP is heard by the Planning Commission.

Site Plans: Completeness Review and Referrals to Other Agencies

Just like discretionary applications, Site Plan Review applications are subject to a “completeness review” within 30 days of application submittal. The applicant is informed within 30 days of any additional information that is required to “complete” the application. During this 30-day review period, the Department will inform many County and state agencies of the application through a “project referral.” The referral process is the same for Site Plan Review, MUPs and CUPs and may include the following agencies:

- APCD
- Public Works
- Cal Fire
- Health Department
- Cities
- RWQCB
- Special Districts
- Public utilities

Environmental Review for Site Plans

Site Plan review applications are subject to CEQA under certain circumstances. LUO section 22.62.040 states that an environmental determination is required for a Site Plan Review application if,

“Where a Site Plan Review application is required by Chapter 22.52 (Drainage) or Chapter 22.14 (Combining Designations) to include a drainage plan, or where Chapter 22.14 or Article 4 (Standards for Specific Land Uses) otherwise require an environmental determination, the determination shall occur in compliance with Section 22.62.050.B, before the processing steps of Subsections B.2 through B.3.”

Based on this section, renewable energy projects may go through environmental review under the same circumstances as any other Site Plan Review application. In this case, there would either be a separate environmental document prepared for the project or the Program Final EIR certified for the RESP might be the appropriate document to use.

Site Plan Approval

The Planning Director is the approval authority for Zoning Clearances, Site Plan Review and MUPs. Site Plan Review applications shall be approved if,

“...the proposed project satisfies all applicable provisions of this Title.” An appeal of the Director’s decision may be filed by any aggrieved person, *“... within seven days of the decision; provided the only basis for an appeal, or action on an appeal by the appeal body shall be whether the proposed use satisfies all applicable provisions of this Title.”*

Process Comparison

The application process for Site Plans, MUPs and CUPs is similar, as shown in the following table.

Table 2
Process Comparison

Process Step	Site Plan Review	Minor Use Permit	Conditional Use Permit
Pre-application meeting	✓	✓	✓
Application packet	✓	✓	✓
Referrals to Agencies	✓	✓	✓
Special Reports (e.g. Biological, Archaeological)	✓	✓	✓
Peer Review of Special Reports	X	X	X
Environmental Review	✓	✓	✓
Public Hearing Notice	X	✓	✓
Appeal	✓	✓	✓

The process followed by Site Plan Review and MUPs is exactly alike until the public hearing step. A MUP requires that written notice of a public hearing be sent to property owners within 300 feet of the project site. The public hearing is called a Planning Director Hearing and a single senior staff member acts as the hearing officer. Site Plan Review does not have a noticed hearing. The difference in process time between a MUP and Site Plan Review can be substantial. A typical MUP can take 4-9 months while Site Plan Review should normally take less than 90 days.

Use of Technical Reports

The Department receives various technical reports with most ministerial and discretionary permit applications. These technical reports include: biological reports, botanical reports, geologic reports, cultural resource reports and water reports. These types of reports are prepared by professionals that are on a County-maintained list of approved consultants. The Department issues Requests for Qualifications to update the lists of approved consultants regularly and provides the lists on the Department's website. Technical reports are subject to peer review if the issue is particularly difficult or controversial.

In the case of the RESP, the technical reports for biological or botanical resources, for example, are relatively simple. The RESP requires these reports to indicate the presence of sensitive species. No further analysis or discretion is needed in order to find whether the site and project are eligible for a streamlined process or must go through the discretionary MUP process.

Projects that Require Site Plan Review (from Tables 2-2 and 2-3, Land Use Ordinance Section 22.06.030 and 22.08.030)

The following uses listed in Table 2-2 that also meet the criteria described below (from Table 2-3) typically require Site Plan Review. However, in some areas, special planning area standards in Articles 9 and 10 of the Land Use Ordinance may require a higher level of land use permit.

Industry, Manufacturing and Processing Uses

Concrete, Gypsum and Plaster Products*

Paving Materials*

Recycling – Collection Stations

Stone and Cut Stone Products*

Structural Clay and Pottery Products*

Warehousing, Wholesaling and Distribution**

*Allowable use limited to manufacturing operations for which the raw materials are extracted on-site.

**Use limited to facilities that support approved agricultural production or processing on the same site.

Recreation, Education and Public Assembly Uses

Clubs, Lodges and Private Meeting Halls

Rural Recreation and Camping - Incidental Camping (10 or fewer units)

Hunting and Fishing Clubs

Public Parks and Playgrounds

Swim and Racket Clubs

Retail Trade Uses

Agricultural Retail Sales

Services

Temporary Construction Yards

Transportation, Communication and Utilities

Transit Station and Terminals

Vehicle Storage

From Table 2-3, Land Use Ordinance

Characteristic	Criteria	Site Plan Review
Dwellings	Number of proposed units	5-15
Manufacturing & Processing, Outdoor Storage	Gross floor area or outdoor use area	10,000 square feet to 19,999 square feet
Retail Trade, Services, and all other nonresidential use groups	Gross floor area or outdoor use area	2,500 square feet to 9,999 square feet
	And traffic circulation	And/or drive-in or drive through
Site Disturbance	Area of site of grading requiring a permit or removal of vegetation	N/A
Impervious Surface	Area per site of site coverage by paving and structures	N/A

Comparison of Existing Permit Levels to Proposed Permit Levels in the RESP

Under the current Land Use Ordinance, permit requirements are established for wind energy conversion systems (WECS) and electric-generating plants. Projects such as solar photovoltaics are generally considered electric-generating plants when they provide some portion of energy generated on-site for sale. Projects are generally allowable with a Minor Use Permit in several land use categories. Projects smaller than 40,000 square feet may be allowable with Zoning Clearance, although ground-mounted projects are generally approved with a Minor Use Permit as described above.

The proposed RESP would establish new “tiers” of solar electric facilities (SEFs) and WECS. Streamlining with Site Plan Review would be available for specified tiers of facilities in certain land use categories. Higher tiers are subject to Minor Use Permit and Conditional Use Permit. The tiers are intended to simplify and clarify permit requirements.

The Renewable Energy Combining Designation identifies areas in the unincorporated county where streamlining would be appropriate for certain tiers meeting additional standards. Within the Renewable Energy Combining Designation, Tier 2 and 3 SEFs are eligible for permit streamlining that is unavailable outside of the Renewable Energy Combining Designation. Areas within the combining designation are those where renewable energy development may be more feasible, including areas with proximity to infrastructure, the absence of conservation easements, and the absence of areas designated for the protection of unique biological issues.

By establishing separate tiers of facilities and the Renewable Energy Combining Designation, the RESP can provide streamlining for appropriate projects in the right locations. To benefit from streamlining, a proposed project would need to 1) be located on an allowable land use category, 2) meet the criteria of the appropriate “tier” of energy-generating facility, and 3) meet applicable RESP standards.

A comparison of current and proposed land use permit requirements is shown in **Table 4**. Please note that the complete land use permit requirements, including existing and proposed considerations for land subject to Land Conservation Act contract and site criteria, are provided in the proposed RESP in the table of allowable land uses and permit requirements for renewable energy facilities and in other standards in Section 22.32.030 of the Land Use Ordinance (please refer to Attachment 4 to the main January 22nd staff report, starting at Section 19). For instance, regardless of land use category, the RESP prohibits siting of tiers 1 – 4 on Class I or Class II soils. The potential streamlining with the RESP is shown below, for projects that meet proposed criteria for the appropriate tier.

Table 4

	AG	RL	RR	RS	RSF	RMF	OP	CR	CS	IN D	OS	REC	PF
Current Requirements													
WECS	MUP	MUP	MUP	NA	NA	NA	NA	NA		NA	MUP	MUP	MUP
Other Electric Generating Plants - Less than 40,000 square feet	P	P	P	NA	NA	NA	NA	NA	P	P	P	NA	P
Other Electric Generating Plants - 40,000 square feet or more	MUP	MUP	MUP	NA	NA	NA	NA	NA	A2 ^[1]	A2	A2	NA	MUP
RESP – Inside and Outside the RE													
Tier 1 - 20 acres or less	SP	SP	SP	NA	NA	NA	SP	SP	SP	SP	SP	SP	SP
Tier 4 – greater than 160 acres	CUP	CUP	CUP	NA	NA	NA	NA	NA	CUP	CUP	NA	NA	CUP

^[1] Site disturbance table is used with the A2 use.

RESP – Inside the RE													
Tier 2 - 40 ac. or less*	SP	SP	SP	NA	NA	NA	SP	SP	SP	SP	NA	NA	SP
Tier 3 – 160 acres or less*	SP	NA	NA	NA	NA	NA	NA	NA	SP	SP	NA	NA	NA
RESP – Outside the RE													
Tier 2 - 20 acres or less	MUP	MUP	MUP	MUP – up to 20 acres only	MUP – up to 20 acres only	MUP – up to 20 acres only	MUP	MUP	MUP	MUP	NA	NA	MUP
Tier 3 – 160 acres or less	CUP	CUP	CUP	CUP – up to 20 acres only	CUP – up to 20 acres only	CUP – up to 20 acres only	NA	NA	CUP	CUP	NA	NA	CUP

NA: Use not allowable

P: Permitted use, Zoning Clearance

SP: Permitted use, Site Plan Review

A2: Allowable use subject to the land use permit required by the specific use standards

MUP: Minor Use Permit required

CUP: Conditional Use Permit required

*Tier 2 and Tier 3 projects that do not meet the streamlining criteria of the Renewable Energy Combining Designation (Section 22.14.100) are eligible for discretionary permits as outlined in Chapter 22.32.

Previously Approved Renewable Energy Projects

The Department has recently approved four Minor Use Permits for small (20 acres or less) solar projects in the north county. The following table shows how these four projects would be affected by the RESP.

Table 5

Project	Power Rating	Acreage	Biological Resources	Soils Type	Additional Distribution	Streamlined?
Scherz	0.5 MW	20 acres	6 species within 5 miles	3 acres Important Ag Soils	None	No- Not on previously disturbed site
Finley	1.5 MW	14.8 acres	5 species within 5 miles	Important Ag Soils	None	No- Not on previously disturbed site and in Williamson Act
Jardine	1.0 MW	20 acres	13 species within 5 miles	19 acres Important Ag Soils	None	No- Not on previously disturbed site
Hill	0.45 MW	5.5 acres	4 species within 5 miles	All Important Ag Soils	None	No – Not on previously disturbed site

Based on the size of each project (20 acres or less), these solar projects would potentially fall into Tier 1 as they cover less than 20 acres. The potential for these projects to streamline as Tier 1 facilities with the RESP is based on several criteria:

- **Soils.** All of the above projects are located partially or completely on Important Agricultural Soils, but are not located on Class I or Class II irrigated soils. According to the proposed RESP, they meet qualifying site criteria for soils type and are eligible for streamlining.
- **Project site disturbance.** While the projects meet the criteria for soils, each of the four projects was located on land that would not meet Tier 1 criteria for site disturbance. Streamlining is available for projects sited on land that is graded, disturbed, or altered or for projects located on land that was previously developed for industrial or commercial purposes and degraded or contaminated and then abandoned and underused. Since each of the four previously approved projects were in locations that do not meet site disturbance criteria, they would not be eligible for streamlining as Tier 1 SEFs.
- **Biological Reports.** The biological reports prepared for the projects state that the California Natural Diversity Database found several sensitive species within 5-10 miles of each project site. The RESP states that streamlining can occur only if the biological report determines that there is no **potential** to find sensitive species on the site. Staff has proposed a revision to this requirement (described later in this report) to delete “potential” from the criteria so that a project could be streamlined if there is no presence of sensitive species on the project site. Under this proposed revision, these biological reports would have to be more site-specific for purposes of complying with streamlining requirements based on the proposed change to language regarding biological reports.

- **Land Conservation contracts.** Projects proposed on land subject to Land Conservation Act (Williamson Act) contracts must still comply with the Land Conservation Act Rules of Procedure. Proposed projects on contracted land that are consistent with Rules of Procedure would be eligible for streamlining with Site Plan Review only when 10 acres or less in site area. Of the sample projects, only the Finley project was located on land in Williamson Act. The Finley project would not be eligible for streamlining as it covers over 10 acres and is already in Williamson Act.
- **Land use designation.** These projects were sited on Agriculture land use categories. Even if inconsistent with the criteria above, if these projects were included in the Renewable Energy Combining Designation, they could still qualify for Site Plan Review as Tier 2 SEFs as long as they met the development standards in Subsection F including:
 - The permit requirements of other agencies
 - Absence of sensitive species
 - Wildlife fencing
 - 500-foot setbacks from specified sensitive habitat and species
 - 50-foot setbacks from other identified habitats
 - Submittal of archaeological reports

“Self-Mitigation”

The County employed an iterative approach to development of the RESP that was informed by the EIR analyses. As each section of the RESP was completed, environmental analysis was conducted and then changes were made to the code or performance standards were added to reduce or eliminate impacts that were identified. In essence, this project analysis and feedback loop constituted a comprehensive alternatives analysis where a version of the RESP was analyzed and then revised to avoid environmental impacts.

The performance standards contained in the RESP are intended to result in “self-mitigation” for most projects. Projects that cannot demonstrate avoidance of environmental impacts (i.e., do not meet the standards) are required to complete a discretionary review process and comply with CEQA. This self-mitigating aspect is why there are no mitigation measures in the EIR. Any action that would be considered a mitigation measure for the RESP is included as a performance standard.

Additional Revisions to the RESP

Staff and the consultant team have continued to review the RESP and recommend revisions to the Public draft released in November. The following changes are highlighted in Attachment 4 to the main January 22nd staff report:

1. Revise the accessory solar definition to include facilities up to three acres (instead of ½-acre).
2. Revise Tier 1 standards in Section 22.14.100 for the Renewable Energy Combining Designation to remove the need to comply with the standards in Section 22.14.100 F.
3. Revise the maximum size of a facility to three acres on an open space parcel in a cluster land division.

The following additional changes are recommended:

4. The Agricultural Preserve Review Committee (APRC) recommends changes to the streamlining and permitting of renewable energy facilities on Williamson Act lands. The APRC recommends:
 - a. Allowing renewable energy projects on Williamson Act subject to standards (see Attachment 6 of original 1-22-15 staff report)
 - b. Allowing the potential for streamlining for projects up to 10 acres.
 - c. Allowing renewable energy projects through Minor Use Permit approval for projects up to 20 acres. Projects over 20 acres would not allowed on Williamson Act land.

The changes needed in the RESP to reflect this recommendation are as follows (**see red highlights**):

Section 22.14.100 A2 (page 9 of 64 Attachment 4)

1. Land Conservation Act. Permit requirements of this Section (22.14.100) shall apply to proposed SEFs on land subject to a Land Conservation Act contract within an RE Combining Designation as follows.
 - a. If a proposed SEF is greater than 10 20 acres in total area within an RE Combining Designation and is subject to a Land Conservation Act Contract:
 - (1) The project shall be ineligible for the permit requirements established by this Section (22.14.100) but may elect to comply with standards of this section to streamline other aspects of project review.
 - (2) The project shall require a Minor Use Permit (or Conditional Use Permit if otherwise required by Chapter 22.32 or the County's Rules of Procedure to Implement The California Land Conservation Act of 1965 (Table 2)).
 - (3) The project shall comply with the County's Rules of Procedure to Implement The California Land Conservation Act of 1965 (Table 2), individual Contracts, the provisions of the Land Conservation Act itself Williamson Act itself and any changes that may be made to it.

- b. If a proposed SEF is 20 acres or less in total area and subject to a Land Conservation ~~Act contract Contract~~ within an RE Combining Designation, the project is allowable in all land use categories if the proposed SEF meets the site eligibility criteria for Tier 1 SEFs in Chapter 22.32 (Energy-Generating Facilities).
- c. If a proposed SEF is 20 acres or less in total area and subject to a Land Conservation Act contract within an RE Combining Designation, but is when inconsistent with the site eligibility criteria for Tier 1 SEFs, the project may qualify as Tier 2 or Tier 3 SEF if the proposed SEF meets the site eligibility criteria established in this Section (22.14.100).

Section 22.32.030 (page 23 of 64 Attachment 4)

Notes

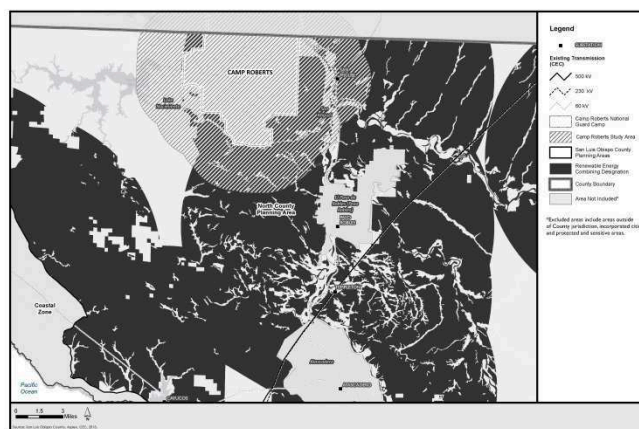
- (1) See Article 8 and this Chapter for definitions of the listed land uses.
- (2) See Article 9 for any restrictions or special permit requirements for a listed use in specific community or area.
- (3) L.U.C. means "land use category." See Section 22.04.020, Table 2-1, for a key to the land use category abbreviations.
- (84) Land uses on property under Land Conservation Act contracts must adhere to the County's Rules of Procedure to Implement The California Land Conservation Act of 1965 (Table 2), individual Contracts, the provisions of the Land Conservation Act itself and any changes that may be made to it.
- (5) The size of the SEF shall be measured as the total area of the facility, inclusive of components and subsystems that, in combination, convert or store solar energy into electric energy suitable for use.
- (6) For Tier 1 SEF projects proposed on land under Land Conservation Act contract up to 20 acres in size, the permit requirements of this Chapter shall apply. Tier 1 SEFs shall comply with the County's Rules of Procedure to Implement The California Land Conservation Act of 1965 (Table 2), individual Contracts, the provisions of the Land Conservation Act itself and any changes that may be made to it.
- (7) For **Tier 2 – Tier 4** projects proposed on land under Land Conservation Act contract:
 - a. Proposed projects up to **10 20** acres in size may be reviewed by Department of Planning and Building staff for consistency with the Rules of Procedure and the Principles of Compatibility unless a discretionary use permit is required by Title 22, in which case the REF project shall be presented to the Agricultural Preserve Review Committee for a recommendation to the Review Authority. The Agricultural Preserve Review Committee shall base their review on the criteria in the Rules of Procedure and the Principles of Compatibility.
 - b. Proposed projects greater than **10 20** acres shall require, a Minor Use Permit or Conditional Use Permit as required by this Section, and the project shall comply with the County's Rules of Procedure to Implement The California Land Conservation Act of 1965 (Table 2), individual Contracts, the provisions of the Land Conservation Act itself and any changes that may be made to it. For purposes of determining permit requirements for WECS proposed on land under Land Conservation Act contract, the area shall be measured as the total area of site disturbance.

5. Delete the word “potential” as in “potential presence of sensitive species” per botanical or biological reports in 22.32 and 22.14. This change will require site specific biological reports to determine the presence of sensitive species on the site. The ability to streamline the land use permit will depend on the finding in the biological report.

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If Botanical Reports or Biological Reports prepared as part of the proposed SEF permit application indicate the presence or **potential** presence of state or federally listed wildlife or plant species or designated critical habitat, the permit requirements and standards of Chapter 22.32 (Energy-Generating Facilities) apply and no alternative requirements are available within the RE Combining Designation. Exceptions to this requirement may apply to ground-mounted SEFs **less than 40 acres in total project area** if the proposed project is located in the San Joaquin Kit Fox Habitat Area and **meets the following criteria**

6. Add the Camp Roberts CRIA map. The County and Camp Roberts have defined an area around the Camp that requires the County to refer projects to the Camp. This area appears on the RE combining designation map.



Next Hearing

The next hearing for the RESP is scheduled for February 5, 2015. The Final EIR will be delivered to your Commission during the week of January 26th. County and consultant staff will provide a presentation on the Final EIR at that hearing.